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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROMEL GIBSON,

Defendant and Appellant.

G031416

(Super. Ct. No. O1WF2090)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, William R. Froeberg, Judge. Affirmed in part, reversed in part and remanded.

Steven A. Seick, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Jeffrey J. Koch and Barry J.T. Carlton, Deputy Attorneys General, for Plaintiff and Respondent.

Romel Gibson was convicted of shooting at an occupied building for aiding and abetting fellow gang member Dexter Hyatt in that crime. He was also convicted of street terrorism and found to have vicariously used a firearm, suffered a prior strike conviction and served a prior prison term. The court sentenced him to 11 years and 4

months in prison. On appeal, he contends there is insufficient evidence to uphold his conviction for shooting at an occupied building because although Hyatt was standing outside the building when he discharged the firearm, his shooting hand was extended inside the establishment. Hyatt raised the same issue in his appeal. For the reasons explained in Hyatt's case, we agree with Gibson that his conviction for shooting at an occupied building must be reversed and the matter remanded for resentencing. (See *People v. Hyatt*, G031317, filed concurrently herewith.) In all other respects, we affirm the judgment.

BEDSWORTH, J.

I CONCUR:

O'LEARY, J.

SILLS, P. J., dissenting:

As I said in my dissent in the companion case of *People v. Hyatt* (G031317), filed today, there is no need for the reversal and resentencing. When someone shoots from outside a building into that building, the statute is violated. The location of the gun's barrel is not crucial: It is the position of the person that is important, and my position on that issue is unchanged.

SILLS, P. J.